an attorney in another state. It is shown that the authorities under both of these situations are in conflict.

The note in Lawyers' Reports Annotated calls attention to a very sensible decision in Parker Sav. Bank. *v.* McCandlas (6 Pa. Co. Ct. 327), in which it was remarked:

"We have several attorneys who are residents of adjoining counties but whose business is that of practicing attorneys of the Allegheny County Bar. Many Philadelphia lawyers reside in the adjoining counties. Certainly the cause of justice is not to be promoted by requiring the attorneys so doing business shall be exempt from service of process in the county in which their business is transacted. We see no sufficient reason for extending to attorneys of our courts who reside out of the county privileges beyond those given to practicing attorneys within the county."

The same note cites another Pennsylvania decision (Coleman *v.* Tim, 18 P. N. C., Pa., 240), in which "a member of the Philadelphia Bar who, for some years, had resided in New York, but who, according to some of the evidence, continued to practice in Philadelphia, was held not exempt from the service of summons while in Philadelphia for the purpose of attending court, it being stated that he was still a member of the Philadelphia Bar, and to some extent in practice there, and must take this privilege *cum onere*."

The annotator refers as follows to a federal court decision: "In Robbins *v.* Lincoln (1886, 27 Fed. 342), an Illinois statute providing that all attorneys should be liable to be arrested and held to bail, and be subject to the same legal process as other persons, but that attorneys should be privileged from arrest while they were attending court and while going to and returning from court, was construed to create a privilege only from being arrested and held to bail, and not to create a privilege from service of process not involving imprisonment or holding to bail; and it was held that an Illinois attorney might be served with summons while in attendance upon a federal court in Illinois, and that an attorney from another state, attending one of the United States courts in Illinois, had no greater privilege, and might be served with a summons in a civil action."

It is true there are several decisions cited in the note which are in conflict with those above referred to, but it is believed that the decision of the Supreme Court of Arkansas in Paul *v.* Stuckey (supra) and of Mr. Justice Hendrick in Kutner *v.* Hodnett embody a reasonably progressive judicial policy.

Railroads—Injury to Persons on or near Tracks—Articles Thrown from Trains.—In the leading case of Fletcher *v.* Baltimore & P. R. R. (168 U. S. 135) it appeared that "the railroad company had been in the daily habit for several years of running out of Washington

and Alexandria a repair train of open flat cars loaded with its employees. The train returned every evening about 6 o'clock and brought the workmen back to their homes. These men were allowed the privilege of bringing back for their own individual use for firewood old pieces of bridge timber, cross-ties, etc. It was the constant habit of the men to throw off these pieces of firewood while the train was in motion at such points on the road as were nearest to home, where the wood was picked up and carried off by some one of the members of the family or by other persons waiting there for it. The plaintiff in the action was walking along the railway and was struck by one of these pieces of wood." The Supreme Court of the United States, reversing the ruling of the trial court, that there was no negligence on the part of the railroad company, held that the question whether or not the company had been negligent was one for the jury. In the opinion of Mr. Justice Peckham occurs the following language:

"It is not a question of scope of employment or that the act of the individual is performed by one who has ceased for the time being to be in the employment of the company. The question is, Does the company owe any duty whatever to the general public, or, in other words, to individuals who may be in the streets through which its railroad tracks are laid to use reasonable diligence to see to it that those who are on its trains shall not be guilty of any act which might reasonably be called dangerous and liable to result in injuries to persons on the street where such act could by the exercise of reasonable diligence on the part of the company have been prevented. We think the company does owe such a duty, and if, through and in consequence of its neglect of that duty, an act is performed by a passenger or employee which is one of a series of the same kind of act and which the company had knowledge of and had acquiesced in, and if the act be in its nature a dangerous one, and a person lawfully on the street is injured as a result of such an act, the company is liable. Any other rule would, in our opinion, be most disastrous and would be founded on no sound principle."

In Nashville, etc., R'y *v.* Lowery's Adm'r (147 S. W. 19) the Court of Appeals of Kentucky refused to extend the doctrine of the case above cited, where it appeared that the intestate of defendant in error was killed while walking on a path along the right of way of plaintiff in error by a drunken negro, who was a passenger, shooting the intestate from a car window. A continuous firing of a pistol from the window of a car brought to the knowledge of employees of the company would doubtless impose the duty of interfering with and controlling the dangerous passenger. In the Kentucky case, however, although the condition of the man who fired the shot was disorderly and riotous, and even though he had been seen by a porter with a pistol in his hand, which he was directed to "put up," it was held, probably correctly, that there was not enough to charge

the company with anticipation of such an unusual act as shooting at a person out of a car window in order to see him "jump up."

The obligation of a railroad company to protect persons lawfully upon station platforms, such as waiting passengers, from injury through the flinging of objects from passing trains, is, if anything, clearer than the duty to guard persons walking or standing by the side of the company's right of way in city streets or in the open country. The recent decision of the Supreme Court of North Carolina in Thomas *v.* Southern R'y (May, 1917, 92 S. E. 321), in common with earlier decisions in other courts, recognizes a company's responsibility where persons upon station platforms sustain injuries through the throwing of mail bags out of passing trains by government postal clerks. It appeared that the plaintiff went to a station on defendant's road to take a train and went out and sat down on the platform, and while there was struck by a mail bag weighing 35 to 40 pounds, thrown from the mail car of a train going by at a speed of about thirty-five miles an hour. There was a crane for mail purposes, but, instead of its use, the custom existed of permitting the throwing out of mail pouches. The court remarked:

"We presume that the court below nonsuited the plaintiff upon the ground that the defendant was not liable for the negligence of the postal clerk in the service of the federal government; but this practice was dangerous, and, being habitual, it was negligence in the defendant not to have reported to the post office authorities, which would doubtless have required the mail clerk to use the crane. If the defendant made such report, or took any other steps to stop this practice, this was a matter which the defendant should have put in evidence."

The law is stated in 6 Cyc., 609, 610 (citing authorities), as follows: "A carrier will be liable if a passenger is injured by reason of the throwing of mail pouches from postal cars in such way as to involve danger to passengers, if it has permitted postal clerks to adopt an unsafe method of delivering such pouches."

The liability being conceded for permitting employees or passengers systematically to endanger the lives of persons lawfully on platforms or near a railroad right of way, it would seem that the principal case and the authorities cited are correct in holding that a railroad company may not entirely wash its hands of responsibility because an habitual menace to safety is practiced by employees of the government. In the opinion of the United States Circuit Court of Appeals, Sixth Circuit, in Southern R'y *v.* Rhodes (86 Fed. 422), it was said:

"The railroad company had no direct control over the matter, the carriage of the mail being under contract with the United States and subject to the control of the government officials and employees in respect to the manner of delivering the mail pouch from the train. However, the duty to its passengers remained with the railroad com-

pany, if there was a dangerous practice of the kind alleged, and the company had notice of it, to take such steps as were necessary and appropriate to inform the department of any breach of its contract, and the violation of the department's rules which resulted in danger to passengers, and to take such further steps as were necessary to prevent the continuance of the practice."

Usury—Recovery of Reasonable Value.—In Roth & Miller *v.* Temkin, in the Supreme Court of New Jersey, 100 Atl. 843, it was held, according to the syllabus by the court, that "a broker who procures a loan of money for his principal, under the express contract of the later to pay him a greater compensation than that allowed by section 5 of the Usury Act (4 Comp. St. 1910, p. 5706), may, notwithstanding such void contract, recover the reasonable value of his services, not exceeding the statutory rate." The New Jersey statute above cited is as follows:

"That every solicitor, scrivener, broker, or driver of bargains, who shall directly or indirectly, take or receive more than the rate or value of fifty cents for brokerage, or soliciting or procuring the loan or forbearance of one hundred dollars for a year, and so in proportion for a greater or less sum, or for a longer or shorter time, or above twenty-five cents for drawing, making or renewing the bond or bill for such loan or forbearance, or for any counter-bond or bill concerning the same, shall, for every such offense, forfeit sixteen dollars, to be recovered by action of debt, with costs, by any person who shall sue for the same; the one moiety to the prosecutor, and the other to the state."

The court said in part: "The penalty for the violation of this provision is not a forfeiture, as in the historic Usury Act, but a specific penalty, to be recovered in a qui tam action. The contract is unlaw ul in the sense that it is law nonexistent and hence unenforcible; but such illegality does not relate to the services themselves, so as to render them immoral, or incapable of being made a basis of recovery independently of the void express contract. It is this feature that distinguishes usury statutes from contracts that call for the doing of that which is immoral or reprobated on grounds of public policy, in which case the courts are closed to the parties in pursuance of a judicial policy that thus purposely penalizes the participants in such immoral and illicit transactions; but where the sole illegality in a contract, otherwise lawful and moral, is that it calls for a compensation that is not allowed by statute, the courts have no judicial policy other than that of seeing that the statute is observed and that such penalties or forfeitures as the legislature has provided are enforced. The statute contains a prohibition and a penalty, each of which in an appropriate action the courts will enforce; the statute contains no forfeiture, and presents no occasion for the construction of one by judicial policy.